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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Ninth Judicial Circuit

Honorable Mikell R. Scarborough
Master-in-Equity

Appellate Case No. 2025-001052

Stephen C. Wells and Randi P. Wells. …….. Respondents.

v.

Spartina Bay Plantation Property Owners' Association, Inc…….. Appellant.

FINAL BRIEF OF APPELLANT

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2. Whether the trial court erred in finding a property owners' association's membership ratified its former's president's execution of an easement agreement that did not comply with the bylaws and was not approved by a vote.

3. Whether the trial court erred in modifying and terminating a property owners' association's legal right to access and use of a declared community dock through rewriting of the documents establishing the creation and use of the community dock.

Statement of the Case

This action arises out of a neighborhood dispute in which Plaintiffs Stephen and Randi Wells ("Respondents" or "the Wells'") sought to limit the rights of their fellow members of Defendant Spartina Bay Plantation Property Owners' Association, Inc. ("Appellant" or "the POA") to access the community dock located behind their house. At issue is the trial court's finding that Appellant is bound by the terms of a purported easement agreement signed by its former president with no POA authority. The former president's unauthorized act resulted in the severe limitation of members' rights to use an ingress/egress pathway to access the community dock and, going even further, the trial Court's grant of summary judgment ultimately deprives the members of a legal right to use the community dock, thus, creating an easement to nowhere that was never approved by a vote of the POA.

Factual Background

Spartina Bay Plantation is located on Edisto Island and consists of a private road, Marsh Bluff Court, which runs from its entrance at Peters Point Road to Store Creek. (R. pp. 328-338). The subdivision was developed by N.C. "Cookie" Boykin in the early 2000s. (R. pp. 328-338). At the end of Marsh Bluff Court is the community dock, located on what is now Respondents' property (known in the community and herein as "Lot B"). The POA's declaration of covenants, conditions and restrictions ("CCRs") require that the POA "shall own or lease the dock…as well as the strip of land designated as Dock Easement." (R. pp. 333). The CCRs grant the right to use the dock to Class A members, who are the owners of certain inland properties in the POA that do not have independent access to Store Creek on their properties. Pursuant to the CCRs' First Amendment dated March 17, 2005 and recorded in Book R 530, Page 876 with the Charleston County Register of Deed, the eight boat slips on the community dock are assigned to the Class A members of the POA. (R. pp. 370-376).

Prior to the trial court's order dated April 16, 2025, the POA's access rights to the community dock and the ingress/egress area were controlled by a 2001 Lease Agreement ("the Lease") entered into by the POA and by N.C. Boykin as Substitute Trustee for Peters Point Trust (the predecessor in interest to Lot B). (R. pp. 378-385). The Lease covered both the ingress/egress area, as well as the community dock itself. Because no record of a bill of sale to the community dock exists, the Lease is the only governing document which gives the POA the right to use (as opposed to mere ingress/egress access) the community dock. The Lease has a 99-year term and expires on September 30th, 2100. (R. p. 378).

The operative plat at the time the POA entered into the Lease, recorded on November 30th, 2001 in Plat Book DD, Page 27 with the Charleston County Register of Deeds, expressly identifies that the ingress/egress Area as a "Dock Ingress/Egress Easement," thereby also establishing an existing easement in addition to the Lease. (R. p. 401). The Lease makes clear that it is binding on successors

of both parties (Section 10(b)) and also provides that "[i]f the Tenant votes to abandon the dock as provided in the Restrictive Covenants, then this lease shall become null and void." (R. pp. 378-385).

At the POA's March 28, 2009 Annual Meeting, the Board, led by then-POA president Bruce Matrisciani ("Matrisciani") expressed concern over the then-owner of Lot B being indicted by the United States Government and an IRS lien being placed on the property. (R. p. 403). Out of concern that subsequent purchasers would not recognize the Lease, the POA expressed an interest in securing a deed to the dock and ingress/egress Area. (R. p. 403). At the October 17, 2009 meeting, the Board agreed that Matrisciani would work with the law firm Barr, Unger & McIntosh to, in relevant part, "attain either a dock easement deed or a lease in perpetuity. (R. p. 463). Subsequently, attorney H. Wayne Unger, Jr. with the Barr, Unger & McIntosh firm wrote to Matrisciani regarding the easement situation and suggested that "it would be good idea to have a Special Meeting (get Proxies where possible) to confirm this action." (R. p. 461). Ultimately, Matrisciani's supposed concerns about a subsequent purchaser not being bound by the Lease proved unfounded, as the Federal Government later took title of Lot B subject to all valid restrictive covenants and leases and sold it to James S. Cox and Catherine T. Cox ("the Coxes") in March, 2010.[1][2]

Even after the Federal Government sold Lot B to the Coxes subject to the Lease, Matrisciani remained intent on altering the already existing rights of use and access to the community dock, based upon his individual personal desire to ensure that the next generations of his family would be able to use the community dock, despite an already existing easement identified on the plat. (R. pp. 401, 413, lns. 5-15). At the POA's November 6, 2010 meeting, the Board expressed dissatisfaction with Barr,

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[2] *See* the Honorable Margaret B. Seymour's Amended Final Order of Forfeiture as to Real Property Located at 1499 Marsh Bluff Court Edisto Island, SC filed in C/A 3:07-cr-00929-MBS, Criminal No. 3:07-929.

Unger, & McIntosh and voted to "contact the Jensen Law Firm to get resolution to the perpetual lease issue and to get an estimate of cost[s] to update the Restrictive Covenants if changes were needed to dock assignments or dock privilege language." (R. pp. 465-66). The POA did not have another meeting for nearly a year and a half following the November 6, 2010 meeting. (R. pp. 468-69).

In the intervening time, and without any action by the Board or the POA members, Matrisciani continued to unilaterally seek and negotiate the Easement Agreement with the Coxes. He then hired a completely different attorney, Karen DeJong, despite the Board's directive to work with the Jensen Law Firm. During the negotiations, on November 9, 2011, Appellant's then-secretary, Ron Farrell, warned Matrisciani against agreeing to the POA paying twenty-five percent of the Coxes property tax bill, and suggested that "we also may want to discuss this with [the] POA members." (R. p. 457). No meeting minutes reflect any debate or discussion on whether the POA should take on the substantial tax burden of paying twenty-five percent of Lot B's property taxes.[3]

These negotiations culminated in Matrisciani signing a purported easement with the Coxes on January 25th, 2012 ("the Easement Agreement"), absent any authority to do so from the Board, which had not held a meeting since 2010. (R. pp. 387-394). The Easement Agreement purported to impose more substantial limitations on Class A members' access rights: specifically, the Easement Agreement provided for *pedestrian* ingress and egress only, a term that was not present in the Lease and was never contemplated by the Board or membership before Matrisciani signed the Easement Agreement. (R. p.

[3] While the Lease contains a similar requirement, it was executed before any improvements were built on Lot B. (R. p. 379). For this reason, the Lease contemplates that "[i]f the Landlord or its successors or assigns construct improvements on the larger parcel the percentages shall be adjusted based upon values of the property." (R. p. 379). For instance, if improvements unrelated to dock ingress/egress access are made, the property taxes would substantially increase. Moreover, if a house was erected on Lot B that was not the owner's permanent resident, the millage rate of Lot B would be substantially higher, despite granting no benefit to the ingress/egress area. No evidence exists of any negotiations taking place on this issue once the house was built on Lot B.

388). The Easement Agreement also purported to bind the POA to paying 25% of Lot B's property taxes, which the POA's secretary had specifically cautioned Matrisciani against. (R. pp. 455, 457). The Coxes then sold Lot B shortly after signing the Easement Agreement, and POA members continued to drive vehicles down to the community dock as they always had.

Respondents later purchased their home in Spartina Bay just prior to the Covid shutdown, when activity on the community dock was minimal. (R. p. 422, lns. 7-22). Despite the relative quiet in Spartina Bay during the Pandemic, Respondents began feuding with another property owner shortly after moving in.

As part of their campaign against the other property owner and the POA Board, Respondents also filed a complaint with DHEC regarding that property owner's alleged use of the dock. (R. pp. 424, ln. 19-p. 421, ln. 4). As part of DHEC's investigation into Respondents' allegations, it determined that a portion of the POA's community *deck* (not the dock), a wooden platform which was located by the entrance to the community dock walkway and regularly used by members accessing the community dock, extended into a protected wetland area and must be removed. (R. pp. 446-47).

The current POA president, Lawrence "Eddie" Evans, II, tried to reason with Respondents and expressed the Board's intention to discuss the matter first, including the potential option of only removing the small portion of the community deck that extended over the wetland to Respondents. (R. p. 449). However, Mr. Wells refused to even discuss how to handle the DHEC determination, and instead unilaterally removed the *entire* community deck, claiming without evidence that the community deck was rotten and unsalvageable. (R. p. 427, ln. 3-p. 428, ln.2; R. pp. 449, 451). Because Respondents tore down the community deck without authorization from the POA, the Board imposed an individual assessment of $2,500.00 against them, which the trial court found necessitated a damages hearing. (R. pp. 35-37, 453). The POA's architectural review board also denied the Respondents'

request to build a fence along the ingress/easement area to restrict access to the community dock via the neighboring lot.[4]

Procedural History

Respondents filed this case on October 26, 2022, bringing three causes of action: (1) a declaratory judgment that the Easement Agreement is valid and binding on Appellant; (2) breach of the Easement Agreement and breach of the covenant of good faith and fair dealing; and (3) a temporary, preliminary, and permanent injunction enjoining Appellant from exercising their rights under the Lease. (R. pp. 42-67).

On December 30, 2022, Appellant timely answered Respondents' complaint and filed a counterclaim, seeking a declaratory judgment from the trial court enforcing the CCRs and clarifying the Parties' rights under the Lease and the Easement Agreement and specifically, a determination that (1) the Lease remains valid and enforceable until September 30, 2100, and (2) that the Easement Agreement is an invalid instrument which cannot bind the POA. (R. pp. 149-55). On January 30, 2023, Respondents replied to Appellant's counterclaim, denying Appellant's entitlement to the relief sought. (R. pp. 156-57).

On May 12, 2023, the Honorable Roger M. Young, Sr. signed a consent order of reference referring the case to the Charleston County Master-in-Equity. (R. pp. 1-3). On November 21, 2024, the parties each filed motions for summary judgment pursuant to Rule 56(c), SCRCP. (R. pp. 304-480). The motions were heard before the Honorable Mikell R. Scarborough on February 10, 2025. (R. pp. 688-748). On April 16, 2025, Judge Scarborough issued a 29-page order granting Respondents' motion for summary judgment in full and dismissing Appellant's counterclaim with prejudice. (R. pp. 10- 38).

[4] Respondents' counsel advised the trial court at the February 10, 2025 summary judgment hearing that Respondents were withdrawing their claims regarding their request to build a fence along the ingress/egress pathway to the dock.

Appellant then filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP on April 28, 2025, arguing that the trial court misapprehended or misapplied the factual record and governing law, and likewise improperly and permanently denied Appellant of its members' legal right to use the community dock, thus making the purported Easement Agreement illusory. (R. p. 674-87). On May 1, 2025, Judge Scarborough issued an order restating his original decision and denying Appellant's motion to alter or amend the judgment. (R. p. 39-41).

This appeal followed, with Appellant's Notice of Appeal being served on May 27, 2025. (R. pp. 754-55).

Standard of Review

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court." *Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 453, 814 S.E.2d 643, 654 (Ct. App. 2018) (quoting *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998) (alteration in original)). Rule 56, SCRCP only allows a court to grant a motion for summary judgment where there is no genuine issue of material fact. *See* Rule 56(c), SCRCP. When a court is "determining whether any triable fact exist[s], the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 462, 892 S.E.2d 297, 301 (2023) (quoting *Callawasie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022)). Moreover, summary judgment is inappropriate when "the evidence is susceptible to more than one reasonable inference[.]" *Id.* at 461, 892 S.E.2d at 300 (quoting *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006)).

Argument

1. The trial court inverted the summary judgment standard by resolving reasonable inferences in favor of Respondents, finding no genuine issue of fact exists as to the Easement Agreement's validity or the former president's authority to bind the POA to the Easement Agreement despite no vote or authority to do so.

The trial court erred in finding no genuine issue of fact existed as to the Easement Agreement's validity despite no evidence of a vote authorizing Matrisciani to unilaterally execute the Easement Agreement, nor any record of a vote ratifying the Easement Agreement after the fact. As demonstrated, herein, the trial court failed to view the evidence and all reasonable inferences in a light most favorable to Appellant, in violation of Rule 56(c), SCRCP.

a. A genuine issue of fact exists as to whether Matrisciani had the authority to unilaterally bind the POA to the Easement Agreement without a vote of the Board or membership.

Under South Carolina law, an agent's authority to bind a principal "is composed of his or her actual authority, whether express or implied, together with the apparent authority which the principal by his or her conduct is precluded from denying." *Roberson v. Southern Fin. of S.C., Inc.*, 365 S.C. 6, 10, 615 S.E.2d 112, 115 (2005). Actual authority cannot be implied; rather, it "is expressly conferred upon the agent by the principal." *Id.* at 11, 615 S.E.2d at 115.

i. The POA's Bylaws did not provide authority to Matrisciani to unilaterally sign the Easement Agreement.

Here, the POA's Bylaws articulate the narrow circumstances under which a POA president can be conferred with actual authority to enter into contracts, such as an easement agreement, on the POA's behalf. *See Orphan Aid Soc. v. Jenkins*, 294 S.C. 106, 110, 362 S.E.2d 885, 887 (Ct. App. 1987) (quoting *Brand v. Lowther*, 168 W. Va. 726, 735, 285 S.E. (2d) 474, 481 (1981)) ("[t]here is **no inherent authority in the president of a corporation** to execute contracts on its behalf, **especially where the contract is unusual or relates to transactions not constituting the usual business of the corporation**") (emphasis added).[5] Article VII, Section 5 of the Bylaws provides:

[5] Moreover, there is no genuine issue of material fact that signing a pedestrian easement agreement limiting Class A members' access rights to the community dock does not constitute the "usual business of the corporation."

> President. The president shall be the principal executive officer of the Association and, **subject to the control of the directors**, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Members and of the directors. He may sign, **with the secretary or, any other proper officer of the Association thereunto authorized by the directors**, certificates for membership of the Association, any deeds, mortgages, bonds, **contracts, or other instruments which the directors have authorized to be executed**, except in cases where the signing and execution thereof shall be expressly delegated by the directors or by these by-laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the directors from time to time.

(R. p. 362) (emphasis added).

This provision makes clear that the POA president can only sign contracts or other instruments on behalf of the POA (1) with the secretary or another proper officer authorized by the directors; and (2) so long as the directors authorized the contract or instrument to be executed. Matrisciani failed to satisfy either condition here.

In finding that the Board authorized Matrisciani to sign the Easement Agreement, the trial court disregarded these clear restraints on the president's authority to sign contracts, instead relying on Article X, Section 1 of the Bylaws, which provides:

> Contracts. The directors may authorize any officer or officers, agents or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

(R. p. 366). The record before the trial court is void of evidence (including but not limited to meeting minutes, executed proxies or written consents) demonstrating that the POA Board of Directors authorized Matrisciani to sign the Easement Agreement.

As an initial matter, it is undisputed that the POA's secretary did not sign the Easement Agreement in question.[6] Nonetheless, without explanation or any legal authority, the trial court interpreted Article X, Section 1 as a waiver of Matrisciani's responsibility to comply with his obligations under Article VII, Section 5 to secure the secretary's signature when signing a contract. In other words, the trial court's interpretation rendered the requirement that the secretary sign a contract alongside the president meaningless, despite its unambiguous inclusion in the Bylaws. *See Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 416-17, 756 S.E.2d 148, 153 (2014) (citing *Crown Laundry & Dry Cleaners v. U.S.*, 29 Fed. Cl. 506, 515 (1993)) (explaining that contractual interpretations which "render[] provisions of a contract meaningless or superfluous" are disfavored). No evidence in the Record demonstrates that the Board waived the secretary-signature requirement set forth in Article VII, Section 5 of the Bylaws.

Although there is no ambiguity in the language of Article X, even assuming *arguendo*, that there was, the conflicting requirements between these two provisions of the Bylaws require that any such ambiguities be resolved in favor of the POA for purposes of ruling on the Wells' Rule 56, SCRCP motion. *See Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 462, 892 S.E.2d 297, 301 (2023) (quoting *Callawasie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022)).

[6] On the contrary, the evidence suggests that the then-secretary, Ron Farrell, did not approve of key aspects of the Easement Agreement, including the provision obligating the POA to pay twenty-five percent of the property taxes for Lot B. (R. pp. 455, 457). In addition to objecting to paying 25% of Lot B's property taxes, the then-secretary cautioned Matrisciani in a handwritten note: "[b]efore we proceed with signing, I think we need to determine what 25% of the tax is. We also may want to discuss this [with the] POA members." (R. p. 457). The trial court wrongly declined to acknowledge this evidence in its order finding no genuine issue of material fact as to Matrisciani's authority.

Without following or even acknowledging Rule 56's mandate, the Court disregarded the secretary-signature requirement entirely, relying instead on Matrisciani's own self-serving and unsupported testimony that he received authority via a series of telephone calls with individual POA members (whom he could not identify by name) who allegedly audibly consented to the Easement Agreement despite there being no meeting noticed and no vote on the Easement Agreement.[7] Without testimony corroborating Matrisciani's hearsay statements regarding the other members, the Court nevertheless found no genuine issue of fact existed. (R. p. 19).

Assuming further, however, that even *if* the trial court correctly determined that Article X, Section 1 governed the president's authority to sign this contract, the court still erred in finding that Matrisciani had the authority to sign this Easement Agreement under Article X, Section 1. At no point did the Board authorize Matrisciani to sign the Easement Agreement in a matter that complies with the Bylaws, a point that Matrisciani conceded in his deposition. (R. p. 415, lns. 2-7).

The trial court also erred in relying on the Bylaw provision that permits the Board and/or members to authorize procedures for voting by telephone. (R. pp. 20, 359). While the trial court recognized that in-person attendance at a meeting is not required, the trial court disregarded that in the very same section the Bylaws reaffirmed that, even when allowing non-in-person voting, the Board can still only act through a majority of directors *present at a meeting* in which a quorum is present. (R. p. 460). There is no evidence in the Record demonstrating that the Board, acting through a majority vote

[7] Matrisciani's testimony was replete with inconsistencies that call his credibility into question, including but not limited to his testimony that he called each POA member and read the entire Easement Agreement to them verbatim. (R. p. 415, lns. 9-16). Matrisciani's dubious credibility, however, is an issue for the trier of fact. *See Collins v. Frasier*, 378 S.C. 249, 250, 662 S.E.2d 464, 465 (Ct. App. 2008) (citing *Parsons v. Georgetown Steel*, 318 S.C. 63, 67, 456 S.e.2d 366, 368 (1995)). The POA should have been permitted the opportunity to challenge Matrisciani's credibility at a trial of this case, rather than the trial court improperly weighing his credibility against the non-moving party at the summary judgment stage.

taken at a duly-noticed meeting with a quorum present, ever authorized voting by telephone as required by the Bylaws.

Furthermore, a meeting in which a vote by telephone had been properly authorized would still need to be duly noticed. Here, there was no notice, no agenda, no quorum, and no publication of the purported Easement Agreement.

Despite these fundamental violations by the former president, the trial court concluded that there were *no procedural defects* regarding the alleged "approval" of the Easement Agreement. (R. p. 15). This is a misapplication of the Rule 56, SCRCP standard, and the trial court erred by failing to at least resolve these factual disputes in favor of the Appellant as to whether Matrisciani was authorized to sign the Easement Agreement.[8]

Indeed, Matrisciani himself testified as to how POA was governed in practice during his time as president and that the execution of the Easement Agreement did not comply with these procedures:

> Q …I want to back up to your time as president, which at least we're looking at 2009, and I think probably until 2014. How was the POA governed during that period of time when you were president? How were decisions made?

[8] It should be noted that the South Carolina Nonprofit Corporation Act, S.C. Code Ann. § 33-31-101 *et seq.*, addresses the scenario where it is impractical or impossible for a corporation to conduct a meeting. If Matrisciani was unable to get a quorum of directors or members to attend a meeting due to few members permanently living in the community, the Nonprofit Corporation Act permitted him to petition the Charleston County Court of Common Pleas for an "order that such a meeting be called or that a written ballot or other form of obtaining the votes of members…or directors be authored, in such a manner as the court finds fair and equitable under the circumstances." S.C. Code Ann. § 33-31-160(a). Matrisciani nevertheless disregarded the proper legal procedure and claims to have simply called the other members to "vote" on the Easement Agreement.

A Meetings. Votes.

Q Okay.

A. Following Robert's Rules.

Q Okay. And so an action to be effective would need a vote by the board?

A Correct.

Q Following Robert's Rules; right?

A Correct.

(R. p. 410, ln. 19-p. 411, ln. 6).

As demonstrated herein, the undisputed evidence shows that Matrisciani failed to follow his own standard of governance in unilaterally signing the Easement Agreement, which at a minimum creates a genuine issue of fact as to his authority, and thus the trial court erred in granting Respondents' motion for summary judgment.

ii. Meeting minutes demonstrate that the Board never authorized Matrisciani to sign the Easement Agreement.

The meeting minutes from the two Board meetings prior to Matrisciani signing the Easement Agreement, held on October 17th, 2009, and November 6th, 2010, respectively, demonstrate that the Board never gave Matrisciani authority to bind the POA under the Easement Agreement. (R. pp. 463, 465-66). At the October 17th, 2009 meeting, the Board voted that Matrisciani would work with the POA's then-legal counsel, Barr, Unger & McIntosh, to "either attain a dock easement deed or a lease in perpetuity [and] that if fees are expected to exceed $2,000, we have a check point going forward." (R. p. 463).

While these meeting minutes demonstrate that Matrisciani was authorized to work with Barr, Unger & McIntosh to pursue a potential easement agreement, they cannot reasonably be read to grant Matrisciani authority to unilaterally hire a new lawyer and then negotiate and sign an easement agreement well over two years later without the approval of the Board and without the secretary's signature. At the very most, the Board authorized Matriciani to sign an engagement letter with Barr, Unger & McIntosh. It did not authorize the execution of other contracts.

After authorizing Matrisciani to work with Barr, Unger & McIntosh on a potential perpetual easement agreement nearly two and a half years before the Easement Agreement's signing, the Board subsequently held a meeting on November 6th, 2010, in part to address the "check point" for Matrisciani identified at the previous meeting. (R. p. 465-66). At that meeting, the meeting minutes note that that Barr, Unger, & McIntosh had billed the POA $2,650 (over the check point amount), and that the Board voted to move forward with the Jensen Law Firm "to get resolution to the perpetual lease issue and to get an estimate of cost to update the Restrictive Covenants if changes were needed to dock assignments or dock privilege language." (R. pp. 465-66). This meeting was the last meeting held prior to Matrisciani signing the Easement Agreement.[9]

[9] Notably, the term "pedestrian," which severely alters the Class A members' access rights to the dock, never appeared in any of the meeting minutes prior to the Easement Agreement's signing. While the Board contemplated seeking a *perpetual* easement, there is no evidence that the Board ever considered, let alone approved, a *pedestrian* easement nor an agreement that did not include a right of use to the community dock, effectively removing authority of the members to use the dock.

In the intervening time, Matrisciani hired a new attorney, Karen DeJong,[10] to draft the Easement Agreement, unilaterally negotiated the Easement Agreement, unilaterally executed the Easement Agreement, and had the Easement Agreement recorded without a vote or approval of the POA.[11]

Indeed, Matrisciani himself confirmed that the Board never properly authorized him to sign the Easement Agreement:

> Q How did the directors act in a way that's not a meeting following the proper procedures laid out in the bylaws?
>
> A Like I said, we did it via phone calls.

[10] In support of its finding that Matrisciani unilaterally changing POA attorneys despite a precedent of such changes being made by the Board, the trial court noted that "substitution of legal counsel for this task was addressed and adopted through unanimous motion at [the POA's] Nov. 6, 2010, meeting." (R. p. 29). While true, this contention supports the POA's position. At that meeting, the Board authorized the hiring of the Jensen Law Firm, not Karen DeJong. (R. p. 465-66). This is particularly true where the POA's practice was to approve the hiring of legal counsel through a Board vote at a duly noticed meeting (R. pp. 465-66). Nevertheless, Rule 56(c) required the Court to view the change in attorneys in a light most favorable to Appellant. Matrisciani's unilateral decision to hire a different lawyer than the one the Board specifically authorized, creates a reasonable inference as to Matrisciani's compliance with the Bylaws and the Board's directives.

[11] The trial court's order transforms the recording statute from a statute designed to protect subsequent purchasers from unrecorded claims against their title of which they lacked notice into a statute that subsequent purchasers can use as a weapon to bind parties to an invalid agreement that they never agreed to. The recording statute cannot be reasonably read as validating an otherwise invalid document simply because the invalid document was recorded and a subsequent purchaser lacked notice of its invalidity. *See Ranucci v. Crain*, 409 S.C. 493, 500-01, 763 S.E.2d 189, 193 (2014) ("[t]his Court will not construe a statute in a way which leads to an absurd result"); *see also generally Belivacqua v. Rodriguez*, 460 Mass. 762, 771, 955 N.E.2d 884, 892 (2011) ("there is nothing magical in the act of recording an instrument with the registry that invests in an otherwise meaningless document with legal effect…Recording is not sufficient in and of itself, however, to render an invalid document legally significant[]"). Taking the trial court's argument to its logical end, any recorded document, regardless of the circumstances in which that document was created, would become binding as a result of being recorded with the Register of Deeds, so long as a subsequent purchaser lacked notice that the document was invalid. That was surely not the intent of our Legislature in enacting the recording statute.

Q So you did not have a meeting with the directors with a quorum present using Robert's Rules where you were approved to sign the 2012 easement agreement?

…

A Correct.

(R. p. 415, lns. 2-7)).

Matrisciani's admission that he did not even follow the procedure that *he* asserted governed the POA during his time as president creates a genuine issue of fact as to whether he had authority to bind the POA to the Easement Agreement.

In an attempt to rehabilitate Matrisciani's failure to comply with the POA's Bylaws, the trial court relied on the Respondents' argument that "nowhere do the bylaws provide that [Matrisciani's] authorization must be in writing or otherwise memorialized in meeting minutes." (R. p. 19). Once again, however, this conclusion is contradicted by Matrisciani's own testimony that the POA was governed by meetings and votes, using Robert's Rules, during his presidency. (R. p. 409, ln. 19-p. 410, ln. 6). Moreover, the trial court's statement confirms that an issue of genuine fact existed as to whether Matriciani had proper authority under the Bylaws to act.

Rule 56, SCRCP required the trial court to view the evidence in a light most favorable to Appellant, yet it failed to do so. Viewed in a light most favorable to Appellant, the lack of any written evidence that a vote took place is evidence that such a vote did not take place.

Accordingly, the trial court erred in finding no genuine issue of material fact that Matrisciani did not have authority to sign the Easement Agreement on the POA's behalf.

b. An issue of fact exists as to whether Matrisciani had apparent authority to bind the POA to the Easement Agreement.

Even if an agent has no actual authority, in some limited circumstances, South Carolina courts will find that a principal is bound by a purported agent's actions if the plaintiff demonstrates that the purported agent acted with apparent authority. *Murphy v. Jefferson Pilot Commc'ns Co.* 364 S.C. 453, 462-63, 613 S.E.2d 808, 812 (Ct. App. 2005) (quoting *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004)). To prove an agent acted with apparent authority, the party asserting the agent's apparent authority must prove: "(1) that the purported principal consciously or impliedly represented to another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." *Id.* at 463, 613 S.E.2d at 813 (quoting *Graves v. Serbin Farms, Inc.*, 306 S.C. 60, 63, 409 S.E.2d 729, 771 (1991)). A purported agent's declarations and conduct cannot solely establish agency; rather, "the principal must intend to cause the third person to believe that the authorized to act for him, or he should realize that his conduct is likely to create such a belief." *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996). Additionally, "the concept of apparent authority depends upon manifestations by the principal to a third party and the *reasonable* belief by the third party that the agent is authorized to bind the principal." *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 432, 540 S.E.2d 113, 118 (Ct. App. 2000) (citing *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979)) (emphasis added). Thus, there can be no apparent authority where the third party's belief in the purported agent's authority is not reasonable.

Here, Matrisciani could not have acted with apparent authority because the POA never represented to the Coxes that he had authority to act on its behalf. Indeed, the Coxes had actual or constructive knowledge that Matrisciani lacked authority to sign the Easement Agreement. As members

of the POA themselves, they were aware or should have been aware of all POA decisions and had access to all necessary information regarding POA authority.

By virtue of accepting their deed, the Coxes had constructive notice of the CCRs, and thus the Bylaws attached to the CCRs as Exhibit D. *See Harbison Cmty. Ass'n., Inc. v. Mueller*, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995) (citing *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2dc 16 (1975)). Therefore, the Coxes had constructive knowledge that Matrisciani could not bind the POA to a contract without authorization from the Board and without the secretary's signature. Accordingly, any belief the Coxes may have had that Matrisciani had apparent authority to enter into the Easement Agreement on the POA's behalf was not reasonable. *R & G Constr., Inc.* at 432, 540 S.E.2d. at 118 (citing *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979)).

Moreover, as members of the POA, the Coxes would have been provided with notice of POA meetings. In fact, Mr. Cox was present at the final meeting before Matrisciani signed the Easement Agreement which occurred on November 6th, 2010, and thus had actual knowledge that Matrisciani was not given authority by the Board to execute the Easement Agreement on the POA's behalf. (R. pp. 465-66). The Coxes were likewise aware that the Board could not have given Matrisciani authority to sign the Easement Agreement on the POA's behalf in the intervening time because it did not have any meetings for well over a year prior to the Easement's signing. (R. p. 429). The trial court erred in construing the reasonable inferences drawn from this evidence against Appellant.

Lastly, the Coxes, by virtue of their deed, had actual or constructive knowledge that the POA could not be bound to an easement agreement unless the POA secretary signed the agreement as well, as required by the Bylaws. (R. p. 362); *Harbison Cmty. Ass'n*, supra. Accordingly, the trial court erred in finding no genuine issue of material fact as to Matrisciani's apparent authority to sign the Easement Agreement on the POA's behalf.

c. A genuine issue of fact exists as to whether the POA ratified the unauthorized Easement Agreement, despite no evidence of a vote demonstrating approval of the same.

To show that a principal ratified an agent's unauthorized actions, a plaintiff must prove: "(1) acceptance of the benefits of the agent's acts, (2) the principal's full knowledge of the facts, and (3) circumstances or an affirmative election demonstrating the principal's intent to accept the unauthorized arrangements." *Stilner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 192, 717 S.E.2d 74, 78 (Ct. App. 2011) (citing *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989)). Mere silence or failure to repudiate the agent's unauthorized acts does not ratify an agent's actions as a matter of law, "unless the silence or acquiescence in question cannot be explained on any other theory than that of ratification." *Id.* at 191-92, 717 S.E.2d at 78 (quoting 2A C.J.S. Agency § 71 (2003)).

Here, not only has the POA not accepted any "benefit" from Matrisciani's rogue actions, but it is not even possible for the POA to receive a benefit from the Easement Agreement until, arguably, the year 2100, when the Lease expires.[12] (R. p. 378). The only expanded right that the POA arguably could gain from Matrisciani's Easement Agreement is that the easement in question is perpetual, rather than limited in term. However, until the Lease expires in 2100, the POA does not gain any benefit from the Easement Agreement because its Class A members already have the right to access the ingress/egress Area pursuant to the Lease. Thus, the POA cannot realize any benefits from the Easement Agreement's perpetuity clause until the Lease expires in 2100.

On the contrary, the POA's rights under the Easement Agreement are reduced from the status quo ante under the Lease, as the Easement Agreement purports to limit Class A members' access rights

[12] Given that an easement for the subject pathway was already identified in the Plat dated September 17, 2001, a perpetual easement likely already existed, which makes Matrisciani's *ultra vires* action even more perplexing. (R. p. 401).

to *pedestrian* ingress and egress only. (R. p. 388). Furthermore, it purports to require that the POA pay twenty-five percent of the taxes for the whole of Lot B, regardless of actions taken by the Lot B owner that may drastically increase the value of Lot B-all of which has nothing to do with the limited ingress/egress pathway. (R. p. 389). Accordingly, there is no benefit for the POA, but actually a detriment, until the Lease expires in seventy-five years.

Additionally, there are no circumstances demonstrating that the Board or membership authorized Matrisciani's signature after the fact. It is undisputed that the Board or membership never voted after the fact to ratify the Easement Agreement. While the meeting minutes from the first meeting after Matrisciani signed the Easement Agreement, held on May 12, 2012, indicate that the Easement Agreement was "announced," it does not show any record that a vote occurred on the Easement Agreement, whereas the minutes do indicate that *other* votes occurred.[13] *See generally Isaac v. Onions*, 445 S.C. 525, 536 915 S.E.2d 492, 498 (2025) (quoting *Hodges v. Rainey*, 341 S.C. 79, ame86, 533 S.E.2d 578, 582 (2000)) (the "canon of construction *espressio unius est exclusion alterius*' or *'inclusio unius est exclusion alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative'"). (R. pp. 468-69). Because the Board voted on certain matters at the May 10, 2012 meeting but *not* ratification of the unauthorized Easement Agreement, a reasonable inference exists that no vote to ratify the Easement Agreement took place. (R. pp. 468-69). The trial court nevertheless disregarded this inference and instead improperly construed the lack of any evidence showing a vote to ratify the Easement Agreement against Appellant.

[13] Notably, the May 12, 2012 meeting minutes also indicate that the POA's secretary and treasurer suggested that the POA reform the Board "so it can become more active." (R. pp. 468-69). The Board's lack of activity, as demonstrated by failing to have a single meeting between 2010 and 2012, creates an issue of fact as to whether (and when) the Board could have authorized Matrisciani to execute the Easement Agreement.

Moreover, the Court also disregarded South Carolina's longstanding precedent that a principal cannot ratify its agent's unauthorized actions by mere silence alone. *Stilner* at 191-92, 717 S.E.2d at 78 (quoting 2A C.J.S. Agency § 71 (2003)). The Court also erred in finding that so-called "operating rules," posted unilaterally by one former member of the Board, removes any issue of fact as to ratification of the Easement Agreement signed nine years prior.[14] As shown herein, the absence of a vote approving the Easement Agreement after the fact, at a minimum, creates a genuine issue of fact as to whether Appellant ratified Matrisciani's execution of the Easement Agreement.

Therefore, there is no genuine issue of material fact that the POA did not ratify Matrisciani's signing of the Easement Agreement after the fact.

2. Alternatively, the trial court erred in finding no genuine issue of fact as to whether the Easement Agreement required the unanimous consent of Class A members to be enforceable.

The Easement Agreement purports to grant the POA pedestrian ingress and egress rights over the area identified as the "'Existing Dock Ingress/Egress Easement' on Plat by Robert Frank Surveying, dated April 2, 2003, revised on June 19, 2003, and recorded in the Charleston County RMC Office on June 26, 2003 in Book EG, Page 457." (R. pp. 378, 471). Importantly, that is the very same area incorporated into the CCRs as Exhibit B pursuant to the First Amendment to the CCRs dated March 17, 2005.[15] (R. pp. 370-76).

The CCRs require that the POA "shall own or lease the dock…as well as the strip of land designated as Dock Easement on a plat referred to in Exhibit 'B[.]'" (R. pp. 370-71). Because this this ingress/egress Area is incorporated into the CCRs, any change to the POA's rights to access the

[14] Furthermore, there is no evidence demonstrating that the purported "operating rules" were ever voted on or otherwise approved by the Board.

[15] The Parties do not dispute that the easement area identified in Exhibit B of the CCRs contains no "pedestrian" limitation to Class A members' access rights. (R. pp. 328-68).

ingress/egress Area would require a unanimous vote of Class A members of the POA. Article VI, Section 4 of the CCRs provides:

> Section 4. Abandonment of Dock. **If one hundred (100%) percent of all Class "A" Membership** of the Property Owners Association **vote in writing to abandon** any repair, rebuilding, **or use of said walkway and dock**… then the Dock Easement as is shown on Exhibit "B" attached hereto, shall (at the option of the owner) be conveyed by the Property Owners Association to the Owner of Lot "B["] (said Lot being defined above and said owner shall be that as is designated on the records in the RMC Office in the County where the property is located). Said Owner shall pay, in full, all of the costs of the Property Owners Association to Deed said parcel, and when deeded, shall become a part of Lot "B" with the provision that said Lot cannot be further subdivided without the unanimous consent of all Lot Owners. The Owner of Lot B shall have all rights to the Dock thereafter.

(R. p. 334) (emphasis added).

Finally, Article X, Section 3(a) states that Article VI (concerning the dock and dock easement) "shall be amended by a unanimous vote of members by class affected." (R. p, 337).

Accordingly, the CCRs make clear that any change to the *use* of the dock easement area identified in Exhibit B (the very same area that is referenced in the purported Easement Agreement) requires an affirmative written vote from all Class A members.[16] It is undisputed that Matrisciani did not follow this procedure, as he never brought the Easement Agreement to Class A members (or anyone) for a vote. Nevertheless, the trial court resolved this factual dispute in favor of Respondents regarding whether the POA affirmed the actions of the President without a vote by the membership or specifically the Class A members where unanimous consent was required before adopting actions that limited the access to the community dock.

[16] It appears that even the Easement Agreement's drafter recognized this requirement as well, as Section 5 of the Easement Agreement recognizes that, to the extent the Easement Agreement is valid, it requires a unanimous affirmative vote of Class A members in order for the easement area to be reverted to the owners of Lot B. (R. p. 389).

Because a change to the use of the ingress/egress Area limiting members' access rights to pedestrian ingress and egress required a unanimous affirmative vote of Class A members, the Easement Agreement, signed only by the POA president, was not properly executed under the CCRs, and cannot be binding on the POA.

3. A genuine issue of fact exists, at a minimum, as to whether the Lease merged into the Easement Agreement, and thus is still valid and binding on Respondents.

Assuming, *arguendo*, that the Easement Agreement is valid, there is still no genuine issue of material fact that the Lease remains in force, as the Easement Agreement did not merge the Lease into it. The merger clause in the Easement Agreement provides:

> 13. Integration. This Agreement is an integrated agreement and expresses the compete agreement and understanding of the Parties. Any and all prior contemporaneous oral agreement or prior written agreement **regarding the Agreement** will be merged herein.

(R. p. 390) (Emphasis added).

In turn, the Easement Agreement defines "the Agreement" as "this Easement Agreement." (R. p. 387); *see also C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n.*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988) (citing *Standard Oil Co. v. Powell Paving & Contracting Co.*, 139 SC. 411, 138 S.E. 184 (1927) ("where the parties define the words or terms which they propose using, the contract will be interpreted according to such definition if free from ambiguity[]")). Accordingly, the Easement Agreement is clear that it only purports to integrate any prior or contemporaneous agreements *regarding the Easement Agreement itself*, such as prior negotiations.

By its own unambiguous terms, the Easement Agreement does not integrate the Lease.[17] The Lease and Easement Agreement do not even reference the same plat survey. Moreover, the Lease

[17] The trial court inexplicably referred to this plain reading of the Easement Agreement as "nonsensical." (R. p. 27

provides the POA access to the ingress/egress Area, as well as the community dock itself, whereas the Easement Agreement only purports to provide the POA access to just the ingress/egress Area, *not* the community dock.[18] (R. pp. 378-85, 387-94). In other words, by suggesting the Lease is terminated and the Easement Agreement is valid, the trial court effectively terminated the members' right to **use** the dock itself, in favor of a right to merely walk down a path to observe the dock, but not use the dock. This result is contrary to every stated purpose of the community dock in the CCR's.

The trial court appears to misunderstand this critical point, as its order inaccurately states that the Lease and Easement Agreement have "the identical subject matter" and cover "the same identical geographical area" (R. p. 27). Thus, the only reasonable interpretation of the Easement Agreement is that it does not incorporate the Lease, and thus the Lease remains in full effect until its expiration date in 2100. Not only did the trial court err in construing any inferences regarding the interpretation of the merger clause in the Easement Agreement against Appellant as the non-moving party, but its ruling was also contradictory to the plain language it was interpreting.

In an effort to skirt around the plain language of the Easement Agreement's merger clause, the trial court cited this Court's decision in *Hughes v. Greenville Country Club* for the proposition that "prior written agreements are merged into a subsequently recorded conveyance regarding the same property." (R. p. 26); *Hughes v. Greenville Country Club*, 283 S.C. 448, 450, 322 S.E.2d 827, 828 (Ct. App. 1984). In that case, this Court held language contained in an *offer* to transfer merged into a final

[18] Accordingly, to accept the Wells' contention that the Lease merged into the Easement Agreement would be to essentially deem the POA's dock access rights illusory; dock access rights are meaningless if the POA does not also have a corresponding right to use the community dock. *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248, 612 S.E.2d 462, 465 (Ct. App. 2005) (quoting *Georgetown Mfg. & Warehouse Co. v. S.C. Dep't of Agric.*, 301 S.C. 514, 518, 392 S.E.2d 801, 804 (Ct. App. 1990)) ([c]ommon sense and good faith are the leading touchstones of the construction of a contract and contracts are to be so construed as to avoid an absurd result[]").

deed regarding the property. *Id. Hughes* is inapplicable here, as the Lease was signed eleven years before the Easement Agreement, provides access to both the ingress/egress Area and the community dock, and it was never terminated. Again, the term "this Easement Agreement" cannot be plausibly read to include a prior lease from eleven years earlier, particularly where the trial court's interpretation of the Easement Agreement's merger clause left the POA with a right to use the pathway to the dock **but not the dock itself.**

To the extent the property law merger doctrine applies, South Carolina law is also clear that "agreements that are not intended to be merged in a deed are not merged into the deed." *Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 260, 743 S.E.2d 868, 874 (Ct. App. 2013) (citing *Hughes* at 450-54, 322 S.E.2d at 828)). Here, regardless of whether the trial court erred in finding that the Easement Agreement is a valid instrument, its interpretation of the Easement Agreement is contrary to Matrisciani's stated intent in unilaterally signing it without authority. *See N. Am. Prods. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015) (citing *Lee v. Univ. of S.C.*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014) ("[t]he primary concern of the court interpreting a contract is to give effect to the intent of the parties[]")). Matrisciani testified:

> Q: And what were your discussions about with Karen as far as a permanent access solution to the dock?
>
> A: Karen, I feel like I'm an idiot if I own this home and generations from now can't use the dock. They're going to think their great grandfather is an idiot. What can we do?
>
> Q: Okay.

(R. p. 413, lns. 10-15).

Ironically, despite Matrisciani's stated intention of securing permanent access to the community dock, the trial court has now ruled that the Lease, the sole document granting the POA the right to use the community dock, has been merged into the Easement Agreement and extinguished. (R. p. 27, "the Lease and all prior rights held by Defendant in the ingress/egress area on Plaintiffs' Property were replaced and merged into the Easement Agreement[]"). As a result of the trial court's unsupported ruling, Appellant now has an easement to nowhere, making the Easement Agreement entirely illusory, except for the POA's obligation to pay 25% of the Respondent's property taxes while gaining no benefit for doing so.

A review of the record demonstrates that the trial court likely misunderstood this central issue and the effect thereof. When the same issue was brought up in a motion to alter or amend the trial court's order, the trial court it merely restated its original decision regarding "access" to the community dock, without any recognition that its order had actually terminated the members rights to use to community dock. (R. pp. 39-41).

Accordingly, the trial court's decision granting summary judgment for Respondents and dismissing Appellant's counterclaim should be reversed.

4. Appellant acted properly and in compliance with the Bylaws in issuing a $2,500.00 individual assessment to Respondents after they unilaterally tore down the community deck.

The trial court also erred in finding Respondents challenge to Appellant's decision to issue an individual assessment to them after they unilaterally dismantled the entire community deck after being informed by the Board that it wanted to discuss it as a community first.

Article IV, Section 1 of the CCRs provide that the POA "may levy, at any time or times assessments for the purpose of defraying, in whole or in part, the cost of any maintenance or repair of any common areas." (R. p. 330). Likewise, Article VI, Section 1 of the Bylaws gives the Board "the

right to establish dues and assessments." (R. p. 360). Article VIII, Section 5 of the Bylaws additionally provides that "[i]ndividual assessments shall be levied on members of the Association where the provisions of the Bylaws or the [CCRs] have been violated." (R. p. 364). Finally, Article 5, Section 13 of the CCRs, as amended, prohibits property owners from taking actions that will, in the Board's judgment, increase the costs of the POA. (R. pp. 396-97).

As discussed above, the Wells' chose to unilaterally tear down the entire community deck after receiving a notice from DHEC that a *portion* of the deck extended over a protected wetland, and after notice from the Board that the Board wanted to seek community input before tearing it down, and that any action to unilaterally tear down the community deck would result in penalties from the Board.[19] On September 24, 2022, the POA president, Eddie Evans, sent the Wells' a detailed letter explaining the factual basis for the Board's finding that the Wells' had violated the CCRs and provided the support in the CCRs and Bylaws for the imposition of the individual assessment. (R. p. 453). The Board determined that an appropriate assessment would be $2,500.00, which as the Board explained to the Wells', was equal to the cost of replacing the deck.

Accordingly, there is no genuine issue of material fact that the Board's individual assessment on the Wells' for unilaterally tearing down the community deck was proper under the POA's CCRs and Bylaws.

5. The statute of limitations does not bar the POA's counterclaim against the Wells', as it is an action in equity.

The trial court ruled that S.C. Code Ann. § 15-3-340 – the statute of limitations relating to actions on real property – bars the POA's counterclaim because the counterclaim was filed over ten

[19] The Wells' conveniently allege that the community deck was "rotten and unsalvageable." (R. p. 54). However, they provided no evidence to support this claim. On the contrary, the current POA president, Eddie Evans, testified on behalf of the POA that he was present when the deckboards to the community deck were removed, and that the structure was still intact. (R. pp. 41, lns. 13-18)).

years after Matrisciani signed the Easement Agreement.[20] However, statutes of limitation do not apply to actions in equity, a point which the trial court failed to even acknowledge. *See Thomerson v. DeVito*, 430 S.C. 246, 250-51, 844 S.E.2d 378, 380-81 (2020).

Declaratory judgments are neither legal nor equitable, and thus their standard of review is "determined by the nature of the underlying issue." *Kinard v. Richardson*, 407 S.C. 247, 256, 754 S.E.2d 888, 893 (Ct. App. 2014) (quoting *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 279, 580 S.E.2d 163, 165 (Ct. App. 2003)). Appellant's counterclaim sought enforcement of the POA's restrictive covenants that Respondents agreed to abide by and to declare void and invalid an easement agreement that attempted to place unapproved limitations on member access to the community dock and unapproved financial obligations on Appellant. It is therefore an action in equity. *See generally Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) (explaining that an action to enforce restrictive covenants may require a court to interpret a contract, but the applicable standard of review was that of an action in equity).

Moreover, it is undisputed that Matrisciani, the former president who signed the Easement Agreement without authority, remained POA president until 2014. The POA arguably could not challenge the Easement Agreement's validity while the very president who signed it was still in control of the POA. Nevertheless, the POA filed its counterclaim in 2022, within ten years of Matrisciani stepping down as president.

[20] Notably, Respondents did not raise the statute of limitations as an affirmative defense in their reply to Appellant's counterclaim. *NuKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 197, 644 S.E.2d 730, 734 (2007) (quoting *Mende v. Conway Hosp., Inc.*, 304 S.C. 313, 315, 404 S.E.2d 33, 34 (1991) (explaining that a party can waive a statute of limitations defense and stating that waiver "of [the statute of] limitations defense may be shown by words or conduct. Thus, waiver may result from express agreement,…from failure to claim the defense, or by any action or inaction manifestly inconsistent with an intention to insist on the statute.") (alteration in original)).

Additionally, while a declaratory judgment cause of action seeking an order affirming the POA's rights was asserted, it is effectively no different than an affirmative defense to the Wells' cause of action, which is not subject to a statute of limitations. *See generally Villages of Greenbriar v. Torres*, 874 S.W.2d 259, 266 (Tex. App. 1994) ([a]s a general rule, limitations statutes do not apply to defenses…a plaintiff cannot file a lawsuit and then claim that the defendant is barred by limitations from asserting affirmative defenses[]"); *Dixon v. Dixon*, 365 S.C. 388, 400, 608 S.E.2d 849, 855 (2005) (citing *Anderson v. Purvis*, 211 S.C. 255, 44 S.E.2d 611 (1947)) (noting that the statute of limitations does not apply to equitable actions). Therefore, the statute of limitations does not bar the POA's counterclaim against the Wells'.

Conclusion

For the reasons stated herein, at a minimum, a genuine issue of material fact existed on each of Respondents' claims as well as the viability of the POA's counterclaims. Therefore, the trial court's decision should be reversed in its entirety.

[SIGNATURE ON FOLLOWING PAGE]

This 23rd day of December, 2025.

Respectfully submitted,

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